STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GENE MINETTI, Complainant, vs. PORT OF SEATTLE, Respondent.	CASE NOS. 6201-U-86-1179 6214-U-86-1182 DECISION 3064 - PECB
GENE MINETTI, Complainant, vs. INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 9, Respondent.	CASE NOS. 6202-U-86-1180 6215-U-86-1183 DECISION 3065 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Gene Minetti, appeared pro se.

Bogle and Gates, by Peter M. Anderson, Attorney at Law, appeared on behalf of the respondent, Port of Seattle.

Michael F. Pozzi, Attorney at Law, appeared on behalf of the respondent, International Longshoremen's and Warehousemen's Union, Local 9.

Gene Minetti (complainant) filed complaints charging unfair labor practices with the Public Employment Relations Commission on January 29, 1986, and February 3, 1986. Each complaint suggested possible causes of action against both the Port of Seattle (Port) and the International Longshoremen's and Warehousemen's Union, Local 9 (ILWU). Accordingly, each complaint was docketed as two separate cases, as indicated above.

The complaints filed January 29, 1986, allege that the Port and the ILWU had violated RCW 41.56.140(1) by implementing a collusive agreement which unlawfully discriminated for or against certain applicants for employment based on union affiliation status.[1] These complaints also allege that the employer discriminated against Minetti for filing earlier charges of unfair labor practices, in violation of RCW 41.56.140(3).

The complaints filed February 3, 1986, allege that the Port and the ILWU had violated RCW 41.56.140(1), by implementing a collusive supplemental revision of their collective bargaining agreement.[2] The revisions were alleged to give preference to, or to discriminate against, applicants for employment based on a previous relationship to or with the union and/or employer officials who made the agreement. The revisions were alleged to be discriminatory against the complainant.

The complaints were consolidated for hearing before Katrina I. Boedecker, Examiner. The hearing was held on April 30, 1987, May 1, 1987 and May 15, 1987. All parties submitted post-hearing briefs.

BACKGROUND

The ILWU runs a hiring hall, supplying warehousemen for several employers at various piers in Seattle. To be dispatched from the union hiring hall, typically a warehouseman will go to the hall and wait to be assigned out to an employer who has made a request for workers. A warehouseman can refuse an assignment to take a chance on later receiving a "better" job, i.e., with a different employer, for a longer period of time, etc.

To obtain seniority in the ILWU, a warehouseman has to work 60 consecutive days with one employer with whom the ILWU has a collective bargaining

---

1 Case Nos. 6201-U-86-1179 and 6202-U-86-1180.

2 Case Nos. 6214-U-86-1182 and 6215-U-86-1183.

agreement. However, an employer can agree in the collective bargaining agreement to allow a warehouseman to obtain seniority with that employer by working a fewer number of days at the employer's facilities.

Gene Minetti has worked from time to time as a "casual" warehouseman along the waterfront in Seattle since at least 1980. He is not a member of the ILWU. Minetti has been dispatched from Local 9's hiring hall as a "casual" warehouseman to various employers. For this service, Minetti pays the ILWU a dispatch fee.

The Port uses Local 9's hiring hall to obtain the warehousemen the Port needs to meet the requirements of its customers. ILWU Local 9 and the Port of Seattle have a collective bargaining agreement with a duration of July 1, 1981 though June 30, 1984. It contains an automatic renewal clause on a year to year basis thereafter. The agreement calls for placing an employee on a seniority list with the Port after that employee has worked 45 consecutive calendar days for the Port. Seniority then prevails in both hiring and layoff. The parties' agreement details:

> SECTION XXII - Seniority
> (b) Recall from layoff
>
> * * *
>
> The Port will initially call men back to work from the Port-wide seniority lists. If the men cannot be called in order of their seniority, the Port will contact the Union after 1600 hours and the Union will advise the Port who is available for work. The Union will notify the Port if a warehouseman higher on the seniority list is available for work thereafter. It shall be the responsibility of the seniority men laid off to contact the Union before 1530 each day to inform the Union of their availability to work the next day.

Larry Wheeler, Director of Labor Relations for the Port, testified that some time in 1985 the Port believed "... that our survival and the warehouse function was in jeopardy and unless we can get on-board with doing something about this wage situation ... ." The Port therefore proposed to Local 9

that the parties revise the wage scale in the collective bargaining agreement. It is unclear whether the Port or Local 9 first proposed job security measures as a quid pro quo for the revised wage schedule, but nonetheless, that was the ultimate resolution.

The Port agreed to temporarily waive the requirement that a warehouseman work 45 consecutive calendar days for the Port before being placed on its seniority list. In so doing, the Port agreed to immediately add 24 new names to the seniority list, now referred to as the "A" Seniority List, and create a "B" Seniority List of 20 new names. The employees on the "A" Seniority List were eligible for a three shift guarantee. If an "A" List employee was requested to work during a Monday-through-Friday time period, he/she would be paid for 24 hours of work. The three shift guarantee was not restricted to a three-consecutive-day time period.

The new Port/ILWU agreement resulted in the Port having a three-tiered wage schedule. Schedule I designated the wages to be paid to the employees on the "A" Seniority List; Schedule II showed the rates to be paid to the employees on the "B" Seniority List; and Schedule III listed the rate for "casual" employees.

In early August 1985, the ILWU held a unit meeting, for union members with seniority status employed with the Port. The purpose of the meeting was to approve or disapprove the Revised Supplemental Agreement between the Port and the ILWU. At the meeting, ILWU business agent John McRae, stated in answer to a question, that union members would have a "good chance" of being considered for the 44 new positions because of the "fair" hour requirement which was being used by the Port.

On August 5, 1985, Wheeler wrote to certain Port managers:

> It is of critical importance for us to rapidly implement an effective selection process to cover acquisition of 43 [sic] new Local #9 Seniority employees. Timely implementation is essential both from the standpoint of the

> Port's demonstration of good faith with the Union and for the implementation of savings.
>
> * * *
>
> The union would be provided with a letter that could be posted in the Union office indicating that sign-up sheets for Port seniority position vacancies are available at convenient Port locations. The Union has said they do not want to take applications or sign up at the hall and I agree with that. The Port needs to retain authority, responsibility, and accountability for the process.

(Emphasis added.)

The original 1981 - 1984 collective bargaining agreement called for the wages to be:

Classification	Effective Date	Straight Time
Utility and General	7/1/81	12.65
	7/1/82	13.80
	7/1/83	14.95
Skill	7/1/81	12.95
	7/1/82	14.10
	7/1/83	15.25
Specialty Jobs	7/1/81	12.95
	7/1/82	14.10
	7/1/83	15.25
Foremen	7/1/81	13.50
	7/1/82	14.65
	7/1/83	15.80

Apparently the parties entered into a Supplemental Agreement on May 25, 1983. The document was not entered into evidence, but it is referred to in the Revised Supplemental Agreement. Its existence would explain the discrepancy in the wage rates listed in the collective bargaining agreement quoted above and the those of the Revised Supplemental Agreement shown below.

REVISED SUPPLEMENTAL AGREEMENT

Schedule I		Schedule II		Schedule III
Utility and General		(All work performed)		(All work)
7/1/81	12.65	entry	11.25	10.00
7/1/82	13.80	6 months	12.25	
7/1/83	13.95	1 Year	12.75	
7/1/84	14.45	1.5 Yrs	13.25	
7/1/85	14.95	2 Years	13.75	
		2.5 Yrs	14.25	
		3 Years	14.75	
Skill				
7/1/81	12.95			
7/1/82	14.10			
7/1/83	14.25			
7/1/84	14.75			
7/1/85	15.25			
Specialty Jobs				
7/1/81	12.95			
7/1/82	14.10			
7/1/83	14.25			
7/1/84	14.75			
7/1/85	15.25			
Foremen				
7/1/81	13.50			
7/1/82	14.65			
7/1/83	14.80			
7/1/84	15.30			
7/1/85	15.80			

On September 4, 1985, Local 9 and the Port executed the Revised Supplemental Agreement which, as described above, amended the existing collective bargaining agreement between the two respondents. The preamble to the Revised Supplemental Agreement reads in part:

> This Revised Supplemental Agreement was mutually initiated by the parties in the interest of providing job opportunities for the Union membership and to establish improved business opportunity for the Port of Seattle.

(Emphasis added.)

Upon signing the contract revision, the Port immediately began developing criteria to select the 44 new seniority employees. The Port analyzed the potential results of several different sets of minimum qualifications being required before an individual would be allowed to apply for one of the new seniority positions.

It was determined that to be invited to apply, a warehouseman would have to have worked a minimum of 160 hours for the Port within the period of July 1, 1984 through August 9, 1985. The Port asserted that 160 hours would provide sufficient exposure to the individual so that it would be likely that Port supervisors would be able to form a judgment as to the abilities of the individual. Also, the 160 hour requirement would provide the individual with some knowledge of the Port's functions and operations.

A recent time period was selected so that supervisors would be able to remember the individuals's work performance. The ending date of the period (August 9, 1985) was the most recent date for which payroll information was available. The Port's analysis of the results of different minimum qualifications showed that the 13 month time period could provide a pool of applicants which was not so large that a detailed review of applicants' qualifications would be unmanageable, but not so small as to eliminate a meaningful choice based on qualifications. Both Sue Weston, the Director of Human Resources, and Wheeler had strong beliefs that opening the application process to the general public would generate thousands of applications which the Port was not staffed to process.

Additionally, the Port wanted to ensure that the applicant pool contained a sufficient number of minorities.[3]

---

[3] Definitive data on minority status was not available at this point in the process so, according to Port officials, this determination was made solely on the basis of name or memory.

Once the applicant pool was established, the Port developed the selection procedure.[4] The applicants were evaluated on five factors: quality of work, quantity of work, dependability, cooperation, and initiative. Scoring on each factor was on the basis of one to three points. A sixth factor, Port experience based on the Port's payroll records, was scored on the basis of two to five points: 2 points for less than 500 hours worked; 3 points for 500 to 1499 hours worked; 4 points for 1,500 to 2,499 hours worked; and 5 points for 2,500 or more hours worked.

Using these guidelines, the applicants were evaluated by a panel of nine individuals: Kelly, Finley, Richardson and six foremen. The foremen were all members of the ILWU. The Port used the foremen because it felt that they had the greatest knowledge of the work performance of the various candidates. The foremen were drawn from various areas of the Port's operations in order to maximize the likelihood that at least some foremen would be familiar with the work performance of each candidate. One black foreman, Leonard Bernard, was included on the panel for affirmative action consistency. Another foreman who had supervised a number of the casual warehousemen, Dalton Lawson, was not selected because he had a son and daughter among the applicants. Lawson testified that the ILWU had previously rejected attempts by the Port to have foremen evaluate workers.

The selection panel began deliberations on September 23, 1985. Wheeler gave an orientation session to the panel. He stressed that only the factors listed on the evaluation guidelines should be considered in the delibera-

---

4 Those involved in formulating the selection procedures included the following individuals: Larry Wheeler who had over 30 years of experience in industrial relations and personnel management; Sue Weston, who has an advanced degree in personnel management and had 12 years of experience in that field; and Dr. LeRoi Smith, Equal Employment Officer who has a Ph.D. in psychology and has been a consultant to governmental organizations. They were assisted by people with knowledge of the qualifications needed for the warehouse positions: J. Loux, Director of Transportation Services; Dick Finley, Warehouse Manager; Jan Kelly, Manager of Marine Operations; and Gary Richardson, a supervisor.

tions. He emphasized that consideration of factors such as race, sex, union membership, or family relationships was prohibited.

The panel deliberated for two and one-half days. It was basically sequestered during this period and was told that the evaluations were not to be discussed with non-panel members. Kelly led the panel in discussing each of the first five factors for each of the candidates. After the discussion, each panel member would give the score for the individual and the factor being discussed. To prevent any one panel member from being a pattern setter on the scoring, Kelly randomly requested different panel members to begin the scoring process. Scoring was done on a consensus basis.

The data for the sixth factor, experience, was contained in a sealed envelope which Wheeler gave to Kelly at the beginning of the deliberations. After the ratings for the first five factors were completed, the sealed envelope was opened and the points for this factor were added. This was done so that a final score could not be determined when the scores for the first five factors were being given.

After the final scores were tabulated, the results were reviewed by Smith to determine if any adjustment was necessary for affirmative action purposes. Smith informed the panel that no adjustment was necessary since the 16% minority make up of the selectees compared favorably to the percentage of minorities in the total number of candidates.

The remainder of the process was essentially mechanical and is detailed in Morris v. Port of Seattle, Decision 2796 (PECB, 1987).

For public relations reasons felt by the Port, the Local 9 officials, who had not been present in the deliberations, were invited to perform the drawing which established the seniority order among the successful applicants.

The Port did not have a stated factor related to union membership status in determining what the appropriate threshold of Port experience should be for

applicants to the new seniority positions. It was later determined that the threshold requirement resulted in a pool of applicants consisting of 52 people who were not union members and 50 people who were union members. The final 44 selectees consisted of 34 union members and 10 persons who were not union members. See: Morris, supra.

Minetti's work history with the Port is sparse. From June 1980 through June 1981 he worked at the Port for 56 hours. The next 12 months he worked another 56 hours at the Port. In the following 12 month block, he only worked 16 hours at the Port. From June 1983 through June 1984, he was not employed by the Port at all.

Minetti did not have the requisite 160 hours within the allotted time period. He was not invited to apply and hence he was not considered by the selection panel. Between July 1, 1984, and August 9, 1985, Minetti worked for the Port a total of 48 hours. During this time period, he had declined 32 hours of work dispatched out of the ILWU to the Port.[5]

In Minetti's experience, the standard work pattern in Local 9 rarely included work from April to the middle of July. Minetti testified that due to a salmonella incident involving canned salmon in the early 1980's work opportunities at the salmon terminals on the waterfront had dropped drastically. Since he was "being discriminated against and acted toward in a hostile way", Minetti testified that he sought employment in California. Minetti left Washington and went to California sometime in April, 1985. Minetti wrote out separate checks for the payment of dispatch fees for each month he anticipated being gone. McRae refused to accept them in advance. Minetti made arrangements with a member of Local 9 to submit the dispatch

---

[5] Like other potential applicants, Minetti was not given credit for work as a warehouseman with other employers on the waterfront. During calendar year 1984, Minetti worked 793.5 hours as a warehouseman for Pacific Maritime Association (PMA). These were hours dispatched from ILWU Local 9, ILWU Local 19 and ILWU Local 52. Additionally in 1984, Minetti had worked hours on dispatch from ILWU Local 9 for Fisher's Mills, among other employers.

fees for him each month in a timely manner. On or about August 9, 1985, Minetti returned to the state of Washington because he heard that work opportunities had increased.

Historically, Local 9 gave preference to its members in its hiring hall dispatching. Local 9 secured this preference by maintaining two separate lists of names for dispatching: the "Book List" of ILWU Local 9 members and the "Casual List" of non-ILWU Local 9 members. Sometime prior to 1986, the ILWU began placing casuals with five or more years of experience as a warehouseman, but who were not members of the union, on a "Red List". These "seniority" casuals would be dispatched secondary to the membership board, but prior to the other casuals. Apparently, Local 9 decided to implement this change in its dispatch procedures due, in part, to agitation from Minetti.

During or about August 1986, Minetti filed a complaint with the National Labor Relations Board (NLRB) arguing that the "Red List" casuals should be placed on the primary dispatch board alongside members. Sometime in September 1986, on advice of counsel, the ILWU entered into an agreement with the NLRB to again change its dispatch practices. Thereafter, the dispatch lists were, in fact, combined and union members were no longer given preference.[6]

---

6 Notice is taken of the NLRB's records on the case, which include a settlement agreement, signed August 12, 1986 stating in part:

> 1. The union agrees that it will merge the Red Casual List and the Book List in the Union's hiring hall. This will be accomplished by August 15, 1986.
>
> 2. The union agrees that it will not give a dispatch preference to applicants who have work experience with employers who are signatory to contracts with the Union over applicants who do not have experience with signatory employers. The union further agrees that by September 17, it will change its hiring hall rules so that dispatch preference is not accorded on the basis of signatory experience.
>
> 3. The Union agrees that it will treat members and non-members equally with regard to any grace period for the payment of dues and dispatch fees....

POSITION OF THE COMPLAINANT

Allegations Against Both Respondents

The complainant argues that the creation of the new seniority positions with the Port furthers the union's goal of restricting the opportunities for people who are not union members to be placed on the dispatch list at the hiring hall. Even among persons who are not union members, the complainant contends that the union advances people with "socio-familial" ties with the union before allowing a person with no connection to the union to be dispatched. The complainant implies that the union had a motive to act in collusion with the employer, in that when Local 9 was forced to combine the "Red List" casuals with the regular dispatch list, it effectively blocked "newly arrived" relatives of members from getting to the top of the dispatch list. Therefore, agreeing to create more seniority positions with the Port allowed the union to by-pass the dispatch list to get "union friends" jobs sooner than other casuals. As evidence of the collusion, the complainant points to the numerous time periods and hour requirements the employer considered before selecting the final threshold. The complainant asserts that the formula was manipulated in order to shape the group of applicants to those pre-desired by the collusive establishment between the Port and Local 9. As additional evidence, Minetti submits the rejection by the Port of his specific requests to consider equivalent work experience at other waterfront employers or other time periods.

Minetti argues that the composition of the selection committee -- six foremen who were members of the union and three management representatives with

---

> 4. Gene Minetti agrees that he will withdraw the charges....
>
> 5. The Parties agree that by entering into this agreement, the Union does not admit to any violation of any statute, or regulation, state or federal, and that this agreement does not in any way affect any other litigation involving the Parties.

"limited" personal knowledge of the applicants -- effectively put the power in the hands of the union and was in violation of RCW 53.18.060. Additionally, he argues that the results of the selection process (34 out of 44 selectees were previous ILWU members and the other ten are claimed to be "mostly relatives" of union members) form a prima facie case of collusion and creates an unconstitutional "de facto" closed shop. He argues that the record shows that the Port and the foremen retain unsatisfactory personnel through the probation period if the employee is one of their friends.

Additional Charges Against the Union

The complainant contends that when the union bargained to change the criteria for obtaining seniority status with the Port retroactively, it violated its obligations to workers in its hiring hall. Additionally, Minetti alleges that the union violated its duty of fair representation by allowing and or sponsoring favoritism among workers based on a union relationship.

Finally, Minetti alleges that Local 9 members and officers have stated to, and about, the complainant that they would make sure he would never get seniority status nor union membership, thus showing bias against the complainant for his criticism of the management of Local 9 affairs.

Additional Charges Against the Employer

In addition to the charges of illegal collusion, the complainant alleges that when the Port "sought to hire from a group who had worked for the Port before" and did not advertise or allow the public an opportunity to apply for the seniority positions, the Port violated RCW 53.18.060. Also, Minetti avers that the Port has engaged in such arbitrary and capricious hiring practices, that it has violated its obligations to due process mandated by Chapter 42.22 RCW, Chapter 42.23 RCW, by state and federal constitutions and by common law precedent.

Minetti alleges that the Port's determination of the cut-off day for the threshold to have hours considered (August 9, 1985) was chosen specifically to coincide with the complainant's return from California and thus insure his inability to acquire work hours and be legitimately evaluated.

POSITION OF THE UNION

The ILWU argues that Minetti is without standing to assert any question regarding the selection panel after the Port established the minimum qualifications necessary to be able to apply for the seniority positions. It reasons that since Minetti lacked sufficient work hours to qualify for the selection process, he cannot question the rest of the process. The union contends that the only issue to be decided is whether the preliminary qualifying criteria discriminated against the complainant. The ILWU advances that it did not participate in the development of the criteria, so the complaint against it should be dismissed.

The union urges that Minetti be estopped from raising union-membership-discrimination as an issue since it is only speculative that Minetti would have made a better effort to qualify if he had known of the criteria in advance. The union asserts that, since Minetti left the state some time in April 1985, the last act it could have taken against Minetti would have had to be complained of by filing within six months, i.e., by September 1985. Since these complaints were filed in January and February, 1986, the union asks that they be dismissed as time barred by the six month statute of limitations.

POSITION OF THE PORT

The Port acknowledges that the 160 hour requirement within the period of July 1, 1984, to August 9, 1985, and the applicable language of the collective bargaining agreement are within the proper scope of the proceeding.

The Port maintains that allegations about the results of the selection process are outside the scope of the proceeding. The Port contends that the language of the supplemental agreement which selected additions to the seniority list on the "basis of qualifications and experience with due consideration being given to affirmative action" does not provide for preference or discrimination based upon minority status, union membership, or relationship to union or company officials. It argues that "qualifications and experience" are the criteria used by most employers in hiring and promotion decisions. Further it claims that a holding that hiring decisions based on these criteria would constitute an unfair labor practice would be tantamount to prohibiting personnel actions based on merit. The Port argues that the threshold requirement was unilaterally adopted by the Port and was not the result of any collusive agreement with the ILWU. Even if there was an agreement with the union, the employer argues that there is nothing discriminatory in giving preference to employees who have had more prior experience with the employer. Such a ruling, it contends, would jeopardize most seniority systems, retirement plans and vacation programs. The Port asserts that since the number of people who were not union members in the pool of candidates was greater that the number of union member candidates, the threshold requirement was not discriminatory.

The employer contends that the allegation that the foremen were acting on behalf of the union is frivolous, advancing that they were acting on behalf of the Port on a Port assignment.

Procedurally, the employer defends that the statute does not allow for class action suits, so Minetti does not have standing to claim that other individuals who satisfied the threshold requirements were subjected to unfair labor practices. Finally, the Port argues that Minetti as a white male, lacks standing to claim discrimination against minorities. The employer contends that Minetti has not met the burden of proof in WAC 391-45-270 and that the complaints of unfair labor practice against it should be dismissed.

DISCUSSION

Jurisdiction of the Public Employment Relations Commission

The Public Employment Relations Commission (PERC) does not have jurisdiction to resolve all disputes in the workplace or to enforce statutes and rules of other agencies which the complainant has cited. Mukilteo School District, Decision 2349 (EDUC, 1986). Any of the complainant's allegations of unfair labor practices based on race or sex discrimination are therefore outside of the jurisdiction of PERC.

> While RCW 41.56.040 is the source of the rights made available to public employees under the Public Employees Collective Bargaining Act, neither that section nor the Chapter as a whole constitutes a direct grant of a right to be free of race or sex discrimination. These subjects are covered by other chapters of statute, notably Chapter 49.60 RCW, and under the jurisdiction of another state agency, the Human Rights Commission.

City of Seattle, Decision 205 (PECB, 1977).

The complainant must also have any allegations wherein he claimed to be acting on behalf of "other employees similarly situated" dismissed. None of the statutes or rules which PERC administers allows for class action complainants to be processed. Morris, supra. In Brewster School District, Decisions 2779, 2780, 2781, 2782 (EDUC, 1987), it was held:

> The rules of the Public Employment Relations Commission make no provision for "class actions" or the like. The "on behalf of similarly situated employees" language of the complaint thus cannot be implemented. Any such employees would need to timely file and process their own unfair labor practice charges with the Commission. In the absence of any provision to create a class, it is not necessary to rule on the union's motion to strike a class action.

There is a difference between the right granted public employees to negotiate in good faith "collectively" in RCW 41.56.010(4), and an attempt to bring an

action "on behalf of" other employees similarly situated. The right to negotiate together with fellow employees, does not create a right to act alone for the benefit of other employees.

Statute of Limitations

In Morris the Commission ruled that the complaint was filed with the Commission beyond the six month statute of limitations set forth in RCW 41.56.160. The complainant in Morris had alleged that the notice and procedures for selection of employees to the 44 new seniority positions were unlawful. The Commission found that the complainant had notice of the selection of the new seniority employees on September 25, 1985. Therefore, the complaint filed March 31, 1986, was dismissed because it was five days beyond the six month statute of limitations period.

In contrast to Morris, there are no timeliness problems with the instant complainants. The Revised Supplemental Agreement was executed by the Respondents on September 4, 1985. The complaints were filed January 29, 1986 and February 3, 1986, well within the six months of the alleged unlawful act -- a collusive, discriminatory agreement becoming effective.

Port's Right to Hire Employees

In his complaints, Minetti alleges that any hiring hall agreement between a port district in the state of Washington and an "employee organization" is unlawful under the port employees collective bargaining act, Chapter 53.18 RCW. The pertinent section of the chapter reads as follows:

> No labor agreement or contract entered into by a port district shall:
>
> (1) Restrict the right of the port district in its discretion to hire;
>
> (2) Limit the right of the port to secure its regular or steady employees from the local community;
>
> * * *
>
> RCW 53.18.060

Union operation of an exclusive hiring hall, pursuant to a collective bargaining agreement, is not unlawful per se, International Brotherhood of Teamsters, Local 357 v. NLRB, 365 US 667 (1961).[7] The Local 9 hiring hall which the employer has agreed to use does not put illegal restraints on the Port. The Port has exercised its discretion and negotiated for a lower threshold for obtaining seniority with the employer (45 consecutive days) than the union uses to obtain seniority within the local (60 consecutive days). In fact, the entire new seniority additions to the employer's regular workforce agreed to in the Revised Supplemental Agreement is due to the employer's exercise of discretion in collectively bargaining with the union.

There is not enough evidence in the record to prove that the Local 9 hiring hall excludes employees from the local community strictly on the basis of residency. Granted the union has regulations regarding obtaining seniority with it which impacts employees in the local community. But the evidence shows that the regulations are uniformly applied to all employees regardless of where they live.

The complainant submitted into evidence the application form for employment with the Port and the application form for employment with Pacific Maritime Association (PMA). The evidence was supposedly submitted to show that PMA was through in its selection procedures while the Port was not. The evidence is unconvincing in relation to the allegations of the unfair labor practice complaints.

Was There a Discriminatory Hiring System?

Discriminatory dispatching from a union hiring hall which encourages union membership violates the National Labor Relations Act (NLRA), Pacific

---

7 The Public Employment Relations Commission considers the precedents of the NLRB and the federal courts in interpreting Chapter 41.56 RCW. Clallam County, Decision 1405-A (PECB, 1982), Pullman School District, Decision 2632 (PECB, 1987), Morris, supra.

Maritime Association v. NLRB, 452 F.2d 8 (9th Cir., 1971). A violation of RCW 41.56.150(1) and (2) would be found for similar reasoning.

The NLRB has found that the maintenance of separate sign-ups for members verses people who are not union members is evidence of an intent to give different treatment to the two groups. Boilermakers Local Union No. 154, (Western Pennsylvania Service Contractors), 253 NLRB 747 (1980), enforced 676 F.2d 687 (3rd Cir., 1982).

The Revised Supplemental Agreement created new seniority positions with the Port which were to be filled based on an applicant's qualifications and experience, with consideration for affirmative action. The time period used to establish Port experience was July 1, 1984, through August 9, 1985. Local 9's August 1986 settlement of an NLRB unfair labor practice complaint inherently acknowledges that a discriminatory system of dispatching was in effect during the period used by the employer in making the 1985 hiring decisions.

In Local Union No. 77 of International Brotherhood of Painters and Allied Trades, (Colorit, Inc.), 222 NLRB 607 (1976), the NLRB held that specific examples of discrimination were not required for the finding of a violation. The mere maintenance of an agreement which granted referral preferences based on prior employment for signatory employers constituted a prima facie violation of the Act. The burden is then on the union, as sole custodian of the hiring hall records, to negate the prima facie case of discrimination. Seafarers' International Union, 244 NLRB 641 (1979). In that case, the union's failure to do so created an adverse inference that such evidence in its possession was not favorable to the union's case.

Any consideration of the length and type of experience of an employee, when that employee achieved the experience as a result of tainted referral practices, is questionable. For example, consider the consequences if a union maintains one list for dispatching white warehousemen and a separate list for dispatching black warehousemen; and the union's rules required that

all employees on the white list be dispatched before calling out the employees on the black list.[8] The experience an employee earned from this dispatch practice would obviously be the result of illegal discrimination. Any parties making hiring decisions based on this illegally acquired experience, would be doing so at a risk.

Right to Refrain from Union Activity

Does a public employee in the state of Washington have a protected right to be free from discrimination due to lack of union activity? Under Section 7 of the NLRA, employees have "the right to self-organization, to form, join, or assist labor organizations, ...". The 1947 Taft-Hartley amendments to the NLRA added that employees had "the right to refrain from any or all of such activities ...".

The Public Employees' Collective Bargaining Act (PECBA), Chapter 41.56 RCW, is the applicable statute for the complainant. RCW 41.56.040 reads as follows:

> No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

The "right to refrain" language is not included in the PECBA. However, the PECBA, like the NLRA, does require that if employees choose to be represented for purposes of collective bargaining by a bargaining representative, that bargaining representative is the exclusive representative with whom the employer and the employees is to deal. This "exclusivity" concept gives rise

---

[8] The Supreme Court has held that both the Railway Labor Act and the NLRA require the union to represent everyone in the unit fairly. Steele v. Louisville & Nashville R.R., 323 US 192 (1944) (Railway Labor Act); Syres v. Oil Workers, 350 US 892 (1955) (NLRA).

to the requirement that the bargaining representative has a duty of fair representation toward the employees. By being the hiring hall for the Port, Local 9 has made itself the gatekeeper to the jobs for the employees. The duty of fair representation becomes a requirement for a high standard of conduct when the union is controlling access to the very means for an employee to earn a livelihood. It follows that a public employee does have a protected right to be free from discrimination for lack of union activity in a hiring hall situation.

Additionally, where RCW 41.56.040 protects public employees' free exercise of their right to designate a representative of their own choosing, RCW 41.56.070 ensures that the representation election ballot shall have "... a choice for any public employee to designate that he does not desire to be represented by any bargaining agent." By preserving the right to vote for "no representative", the right to refrain from union activity can be extrapolated from the PECBA.

Evidence in the Morris case, supra, established statistically that the system developed to fill the 44 new seniority positions provided for in the Revised Supplemental Agreement between the Port and Local 9, lead to significantly more union members being chosen for the positions than people who were not union members.[9] Clearly, the Port was basing its selection of employees to the new seniority positions on: 1) the observations made by its agents of employees dispatched from the hiring hall; and 2) the length of time an employee worked when dispatched from the hiring hall. The Port argues that given the eligibility requirements for membership in Local 9, it is not surprising that many of the candidates selected were union members. It advances that employers are normally unwilling to employ an individual for 45 days or more unless the individual is a good worker. Thus, highly qualified

---

9 The Commission reversed a portion of the Examiner's decision in Morris based on two grounds. First, the Port was not given reasonable notice that the broader question of union discrimination in the hiring hall operation would be at issue. Second, evidence was not presented to show that the Port used the hiring hall during the six-month period prior to the filing of Morris' unfair labor practice complaint. In the present complaints, the Port had notice that the complainant was alleging that there was discrimination, due to union membership and/or personal relationships, in the handling of hiring hall dispatches.

workers tend to break the 45 day "barrier" while less qualified workers have great difficulty in doing so. By the same token, good workers tend to satisfy the 60 day requirement for union membership while less qualified workers do not. Therefore, the Port submits that qualified candidates would usually be union members. This argument loses persuasiveness, however, when one realizes that during the time period in which the candidates were evaluated for selection, the union controlled the dispatches and the union acted discriminately, giving preference to its members.

The use of tainted work experience records for both minimum qualifications and as final criteria for selection results in an illegal hiring system.

Is the Employer Liable for the Way the Union Runs Its Hiring Hall?

PERC has recognized that employers have a right to control their hiring decisions without bargaining. Kitsap County Fire District No. 7, Decision 2872-A (PECB, 1988).

In the past, the NLRB has held employers strictly liable for the manner in which a union runs its hiring hall.

> When an employer delegates hiring to a union by utilizing a union referral-system to obtain its employees, it is responsible if the union operates the system in a discriminatory manner. This is so even if the employer has no actual knowledge of the Union's discrimination.

Frank Mascali Construction G.C.P. Co., 251 NLRB 219 (1980) enforced mem. 697 F.2d 294 (2d Cir., 1982).

The strict liability was based on a theory of respondeat superior. Thus, it was assumed that a principle-agent relationship existed between an employer and a union.

> [R]egardless of the extent of their knowledge we agree with the board that an employer may not avoid liability for violations of the Act by the hiring hall when he has

> turned over to it the task of supplying the men to be employed. The Local acted as agent for the petitioners in selecting the men to be hired. Its discriminatory acts ... are properly chargeable to the agent's principal as discriminatory acts by it.

Morrison-Knudsen Co. v. NLRB, 275 F.2d 914 at 917 (2d Cir., 1960).

The concept of strict liability was rejected by the Court of Appeals for the District of Columbia Circuit in Lummus Co. v. NLRB, 339 F.2d 728 (D.C. Cir, 1964). The court reasoned that strict liability meant that the agent was under the complete control of the principal. Such complete control is in contravention to the basic tenant of labor relations that an employer cannot dominate a bargaining representative. The court concluded that an employer cannot be liable for a union's procedures in its hiring hall dispatches unless the employer had actual knowledge or reasonably could be charged with notice of the union's discriminatory conduct.

The NLRB adopted the Lummus approach in Wolf Trap Foundation, 287 NLRB No. 103 (1988). The Board wrote:

> We note that, in Lummus, the court observed that "where the agreement itself, either on its face or by reference to another agreement or to union rules, requires discrimination, or where the discriminatory acts were widespread or repeated or notorious, the employer might reasonably be charged with notice of those acts." Id. at 737. ... Wolf Trap and Ford's Theatre had written collective-bargaining agreements with the Union which expressly required discrimination. Both agreements were facially invalid in that they contained unlawful "closed shop" provisions which required all work covered by the contract to be performed by union members. Although the hiring hall arrangement itself was not unlawful, we conclude that the inclusion of the unlawful closed-shop provision in the contract is sufficient ground to charge Wolf Trap and Ford's Theater with notice that the Union, in the operation of the hiring hall, might be preferring its own members to the exclusion of nonmembers.

The collective bargaining agreement between the Port and Local 9 has among its provisions a non-discrimination clause which prohibits discrimination

"with respect to union membership". The parties' agreement also contains a Union Membership Section which states in full:

> All present employees who are members of the Union as of the date of the execution of this agreement shall remain members during the life of this agreement as a condition of continued employment. Present employees who are not members of the Union at the date of the execution of this agreement and elect in the future to become members shall remain members thereafter during the life of this agreement as a condition of continued employment. All employees hired after the execution of this agreement shall become members of the Union within sixty (60) days following the beginning of their employment and shall remain members during the life of this agreement as a condition of continued employment. No employee will be terminated under this subsection if the Port has reasonable grounds for believing:
>
> 1. That membership was not available to the employee on the same terms and conditions generally applicable to other members, or
>
> 2. That membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

This is, in essence, a "union shop" provision. RCW 53.18.050 recites that: "A labor agreement signed by a port district may contain: ... (2) Maintenance of membership provisions including dues check-off arrangements; ...". At the time the contract was signed, the union security provision might have been questioned as going beyond the usual meaning of "maintenance of membership." RCW 53.18.015, added in 1983, states in part: "Port districts and their employees shall be covered by the provisions of chapter 41.56 RCW except as provided otherwise in this chapter." The PECBA provides that:

> A collective bargaining agreement may:
>
> (1) Contain union security provisions: Provided, That nothing in this section shall authorize a closed shop provision: Provided further, That agreements involving union security provisions must safeguard the right of non-association of public employees based on bona fide religious tenets or

> teaching of a church or religious body of which such public employee is a member. ...

RCW 41.56.122

The maintenance of membership clause authorization found in RCW 53.18.050 does not appear to be a provision that is so exclusive that it would fall into the "provided otherwise" exclusion of RCW 53.18.015. The allowance must be blended with the provisos in RCW 41.56.122, which protect a public employee's right of non-association.

Close examination of the Revised Supplemental Agreement reveals a defect existed in it when it was negotiated in 1985. There is no protection of a public employee's right of non-association in the Union Membership Section of the bargaining agreement between the Port and Local 9. The clause clearly demands that all employees become union members 60 days after being hired. The NLRB has ruled that the mere existence of an illegal union security clause, or other contract provision, which requires membership in a union before being allowed to work, or which grants preference in hiring to members of the union would cause the entire collective bargaining agreement to be voided. Pacific Maritime Association, 89 NLRB 894 (1950).

The respondents' collective bargaining agreement also provides:

> Past Practices and Working Conditions - Past practices and working conditions remaining in effect under this agreement as defined in the Working Rules attached to this agreement shall not be changed or altered without mutual agreement between the Union and the Port.
>
> * * *
>
> Working Rules
>
> * * *
>
> 9. Work under Local 9 jurisdiction performed in a warehouse will be done by Local 9 members within the scope of their expertise.
>
> * * *

(Emphasis added.)

The nondiscrimination clause in the contract does not override the fact that the employer can reasonably be charged with notice that the union discriminates in favor of union members. In Wolf Trap, the NLRB was not persuaded that since the union occasionally referred nonmembers to the employers, that the employers could believe that the union was not strictly enforcing the closed shop provision. The Board wrote:

> Nonetheless, [the employers] are chargeable with knowledge that the agreement contained a clause authorizing, if not requiring, such discrimination. [The business agent] therefore had contractual support for his imposition of the union card requirement. It is not unreasonable to charge the Respondent theatres with notice that a party to the agreement might seek, at least on occasion, to enforce the plain meaning of the agreement and to hold them liable when such a foreseeable consequence occurs.

The same situation exists between the respondents to the instant complaints.

Further, the Port had expressed a desire to have "authority, responsibility, and accountability" for the selection of the new seniority employees. A reasonable employer, attempting to maintain such control, would be certain to be familiar with how a union was referring employees that the employer was evaluating for selection.[10] The Port was too involved in employment practices to reasonably be found to be unaware of the separate dispatch lists that Local 9 was maintaining at that time.

In the present complaints, the Port can reasonably be charged with notice of Local 9's discriminatory manner of dispatching casual employees.

---

10 In any case, one reading of the Union Membership section of the parties' collective bargaining agreement would put a duty on the employer to know how membership in the union was given to employees. Therefore, it could be implied that the employer was aware of the discriminatory dispatching process and, by its silence, agreed to the practice.

Was There Collusion?

Collusion by definition is a secret arrangement. By its nature, therefore, it is difficult to prove. Black's Law Dictionary defines collusion as: "[A]n agreement between two or more persons to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law."

Local 9 and the Port collectively bargained the Revised Supplemental Agreement. The preamble of the Revised Supplemental Agreement shows obvious collusion to obtain an illegal goal:

> This Revised Supplemental Agreement was mutually initiated by the parties in the interest of providing job opportunities for the Union membership and to establish improved business opportunity for the Port of Seattle.

(Emphasis added.)

The Agreement itself did not outline the procedures for selection of the newly added seniority employees. The record establishes, however, that the Port was sensitive to the union's reaction to the selection process.

The Local 9 business agent reported to a membership meeting that union members would have a "good chance" of being considered for the new positions because of the "fair" hour requirement which the Port was using. Obviously, there was communication between Local 9 and Port representatives to give the business agent such reassurance. In Wheeler's letter of August 5 he wrote:

> The possibility of opening the list up to the public rather than limiting it to Local #9 casuals (sic) employees with Port work experience was discussed. I am strongly against such an approach. It would create an unmanageable number of applicants and the selection process would have to be very lengthy and far more complex. Additionally, this would run counter to our previous discussion with the Union about selection of casuals with Port work experience. Most important, I don't see any reason that it would provide us with better candidates. In fact we could be at greater risk on quality.

On August 15, 1985, Wheeler wrote John Belford, Deputy Executive Director of the Port:

> With the Revised Supplemental Agreement for Local #9 Warehousemen, 44 employees are to be selected for seniority status - 24 of the "A" List and 20 on the "B" List before the $10.00 rate goes into effect for casuals.
>
> * * *
>
> (All of this assumes that Local #9 signs the contract. They say they will, but roadblocks appear here and there even though the membership has ratified.)

Wheeler could not adequately recall what he was referring to as "roadblocks" when he was questioned at the hearing. Both these letters reflect further evidence that there were discussions between the employer and the union regarding what would be the qualifications a warehouseman would have to have to apply for the new seniority positions.

In addition to the dramatic statement of collusion in the preamble to the Revised Supplemental Agreement, there are inferences of collusion to be drawn from the record. Local 9 wanted an "object forbidden by law", i.e., the hiring of its union members before people who were not members. The Port wanted to stay in business; not an illegal object. The Port felt it could achieve this goal more readily by having a flat $10.00 hourly pay rate for casuals; also, not an illegal aim. The easiest way to gain the $10.00 flat rate for casuals, was for the Port to help Local 9 achieve its goal. By discussing with the Port the time periods the Port would consider using for "observation evaluations" to select the new seniority positions, Local 9 could easily realize that its objective was being met. The evidence supports the finding that illegal talk was being exchanged. The preamble spells it out. McRae's reassurances to the union members at the August 25 meeting is more evidence of this collusion. The third parties who were impacted by the collusion were the casuals who were not union members; Minetti is one such casual. The impact is dramatic: Denial of the opportunity to make a livelihood.

Evidence of a specific intent to encourage or discourage union membership is not necessary to sustain these charges. The Supreme Court has held that a conclusion that unlawful discrimination, based on union membership, can be made where encouragement or discouragement of union membership is the foreseeable consequence or likely effect of the discrimination. Radio Officers' Union v. NLRB, 347 US 17 (1954). The Court of Appeals also has held that an unfair labor practice of restraining or coercing employees in the exercise of their rights guaranteed under the NLRA does not require actual proof of intent to influence the exercise of such rights. The NLRB's inferences concerning the "natural foreseeable consequences of the conduct" where adequately supported by the record, will be sustained. IATSE, Local 659 v. NLRB (MPO-TV of California), 477 F.2d 450 (Cir. DC, 1973), enforced 477 F.2d 450 (D.C. Cir., 1973) The entire dispatch process used by Local 9 and accepted by the Port at the time in question had the foreseeable consequence or likely effect of encouraging union membership.

Was There Discrimination Based on Familial Relationships?

The record does not support a finding that the Port and/or Local 9 selected or effectively recommended for selection, employees who were related to Port or Local 9 officials. Lawson was specifically excluded from the evaluation panel because his son and daughter were under consideration. The fact that a few of the candidates may have been related to individuals who work on the waterfront does not establish an unfair labor practice. The complainant has the burden of proof in establishing the truth of the allegations of unfair labor practices; WAC 391-45-270. The complaints alleging that there was a collusive revision of the collective bargaining agreement based on applicants' prior relationships to or with union or employer officials will be dismissed.

Discrimination for Filing Unfair Labor Practice

Minetti testified that after he filed a complaint with the NLRB, a great deal of animosity was generated against him. Specifically, he testified that a

Mike Stone had attempted to "pick a fight" with him, and that a Edgar Martin told him that he would "never be allowed to be a member of the union" since he was "suing" the union. Neither Stone nor Martin were further identified as to their employment positions with either Local 9 or the Port. Although this testimony from Minetti was objected to as conclusionary and as being hearsay, it was not refuted. If Stone or Martin were union officials or Port supervisors, a violation could be found. However, since there was no linkage of Stone or Martin to acting with authority for either the union or employer, a violation cannot be found.

Given the complainant's success in pursuing legal action to bring about changes in the operation of the dispatch hall, it is possible that he could be viewed by the union as an "troublemaker". However, to carry the burden of proof, the complainant has to establish more than a mere possibility. The record does not support a finding that Minetti was discriminated against for filing unfair labor practice charges.

REMEDY

The complainant seeks to have the Revised Supplemental Agreement declared illegal; to have the "B List" dissolved; and to have the Port ordered to select again in a fair manner which would not be based on "secrecy of foreknowledge" of the set of criteria which would be required for seniority status. Minetti contends that the time period for the consideration of experience and performance level should only relate to a future period, and not a past time when employees did not know that acceptance of dispatches to the Port would be important.

Eligibility for Remedy

The Commission has broad authority to fashion appropriate remedies. RCW 41.56.160 states that "The commission is empowered and directed to prevent

any unfair labor practice and to issue appropriate remedial orders...". This is similar to the scope of remedial authority the NLRB has under its Act.[11] Without a doubt, the NLRB has more experience in the implementation of the wide remedial authority set forth in the unfair labor practice provisions of the collective bargaining statutes.

The NLRB does order back pay to identifiable employees, similarly situated to the charging party, when a discriminatory hiring hall has been found. It does so without any provisions for class-action charges in the NLRA. It does so, also, without reference to the Federal Rules of Civil Procedure, Rule 23 Class Actions. The Third Circuit Court of Appeals enforced an NLRB order which granted make-whole relief to all applicants to a discriminatorily operated union hiring hall who suffered losses in Western Pennsylvania, supra. The determination of the list of discriminatees was left to the compliance stage of the proceedings. Previously, in International Longshoremen's Association, Local 851 (Western Gulf Maritime), 194 NLRB 1027 (1972), the NLRB had reversed a trial examiner who had ordered the respondent to make whole the charging parties and all other applicants for employment for any loss of pay suffered by them by reason of the discriminatory operation of the hiring hall.[12] In Western Pennsylvania, the NLRB distinguished Western Gulf

---

11 NLRA Sec. 10(a) "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. ..."

12 The trial examiner had written:

> The record in the instant case reveals blatant discriminatory practices by Local 851 with no colorable defense, and in my judgment a remedy which did not require it to reimburse the class of employees discriminated against would almost ensure the continuation, albeit under some form of adaptation, of the discriminatory practices. As a matter of fact, in view of the manner in which gang foremen select a gang, based on subjective evaluations of the ability of the men at the shape up, I am not confident that discrimination against members of Local 329, and other applicants who are not members of Local 851, may not be practiced with impunity despite the cease-and-desist provision of the recommended

---

> order herein, and the possibility of another backpay order against Local 851 in the event of future discrimination appears to me to be a necessary deterrent if the policies of the Act are to be effectuate. [sic] I shall therefore recommend backpay as follows: (a) to the Charging Parties, to the extent that they suffered loss of wages by reason of the denial of their request for seniority classification so that they received assignments of work only from the casual group rather than from such seniority classification group to which they should have been assigned; (b) to the Charging Parties, to members of local 329 generally, and to other applicants for employment in the casual group who are not members of Local 851.
>
> The recommendation of back pay for members of Local 329 generally, and for all applicants for employment who are not members of Local 851 is based on the finding that Local 851 practiced discrimination against all members of Local 329 and nonmembers of Local 851, not merely against the Charging Parties.
>
> ... back pay for members of Local 329 under this recommendation would depend on a showing that an individual was a regular user of Local 851's hiring hall. ... (... I am not suggesting the precise number of hours to be used. This is for the General Counsel to determine at the threshold in working out compliance or preparing a back pay specification.)
>
> The same consideration would apply in determining whether other applicants for employment who were not members of Local 329 or Local 851 would be entitled to back pay. In short, under the terms of this recommendation, in order to qualify for backpay an individual would have to show more than that he was a member of Local 329 or that he was a longshoreman.

In its reversal of the Trial Examiner, the Board wrote:

> ... the record does not reveal that any identifiable members of Local 329 [i.e. the local which was discriminated against] other than the Charging Parties at any time applied for classification cards and were denied the same or were in any other manner discriminated against in such a way as to have suffered a loss of earnings. In these circumstances, we deem it inadvisable to extend our "make whole" remedies to include losses of

on the grounds that there was no evidence in Western Gulf that any unnamed individuals were damaged. In Western Pennsylvania, the General Counsel introduced specific evidence of the "out-of-work-book" involved in the discrimination and reports of payments made to employees out of contractual benefit funds. Such records established a class of unnamed injured discriminatees.

The record in the instant case establishes that there were two distinct classes of unnamed injured discriminates: those employees who were not members of the union who were on the "Red List" and those employees who were not members of the union who were on the "casual list". Both respondents had clear notice throughout these proceedings, that Minetti was seeking remedies for discriminatees other than just himself. Discouraging or encouraging union membership is such an affront to the PECBA that the standard of Western Pennsylvania should be used in the instant proceeding to emphasize that the Commission will not tolerate employers and unions trammelling the rights of public employees.

When a court of appeals attempted to limit an NLRB remedy in a discriminatory hiring hall situation to just the charging parties instead of including other similarly situated employees as the Board had ordered, the U.S. Supreme Court reversed the decision. Ironworkers, Local 480, 466 US 720 (1984).
The Commission, itself, has issued orders which grant relief to employees other than just the individually named complainant. In City of Olympia, Decision 1208-A (PECB, 1982), the Commission affirmed the order of the Examiner who had reinstated an employee who the Examiner had found had been discharged for his union activity. The city was ordered to cease and desist from "Discharging or otherwise discriminating against any employee because of the exercise of the right to organize and designate representatives for the purpose of collective bargaining." (Emphasis added.) The city was also

---

earnings to unknown individuals who were not named in the complaint and whose status as a part of a group which was unlawfully deprived of work was not litigated during the course of the hearing.

ordered to cease and desist from interfering, restraining or coercing employees in the exercise of their right to organize and designate representatives for the purpose of collective bargaining. The Commission affirmed similar language in Valley General Hospital, Decision 1195-A (PECB, 1981). Although those orders were prospective in nature, they are evidence of the Commission's efforts to grant relief to a general class of employees.

Union members who were on the Red List or the casual list are not eligible for the remedy since they would not have been adversely affected by the dispatch practice.

Back Pay

Back pay remedies have been ordered by the NLRB in cases where a discriminatory operation of a hiring hall was found.

> The Union argues that the back pay award would be in the order of several million dollars' and would conceivably destroy the Union. At this stage, the assertion is speculative. Because the compliance stage of the proceedings has not yet been reached, we have no way of knowing the exact amount involved. Moreover, even if the award did reach the total contemplated by the Union, that does not change its nature from remedial to punitive. The Board is simply requiring the Union to reimburse those who lost income as a result of the Union's illegal discrimination. The Board is not ordering that the employees be made more than whole. Thus, the order merely removes the effects of the unfair labor practice by giving those who were its victims what they would have received absent the Union illegal practices.

NLRB v. Longshoremen, Local 13 (Pacific Maritime Assn.), 549 F.2d 1346 (9th Cir., 1977).

Back pay shall be calculated on a quarterly basis in accordance with WAC 391-45-410(1). See also: F.W. Woolworth Company, 90 NLRB 289 (1950).

In the case at hand, there is no right to back pay for the entire sixth month period immediately preceding the filing of the complaint. [Cf., Plumbers Local 198 v. NLRB (Jacobs/Wiese), 747 F.2d 326 (5th Cir., 1984).] Back pay shall begin from the time the first employee was employed by the Port off of the "A" or "B" Seniority Lists. Therefore, the back pay shall start from on or about September 4, 1985. The date that an employee was hired off of the new system is the appropriate starting time for back pay because the complainant alleges that he was injured by the effect of the discriminatory hiring hall. There is no dispute that there was a discriminatory hiring hall; McRae admitted the fact of its existence during the time period in which the Port observed and evaluated applicants, even if he did not acknowledge its legal implications. The effect of the discriminatory hiring hall was the creation of the "A" and "B" Seniority Lists from observations based on a tainted time period for dispatching.

Back pay shall be granted to Gene Minetti and all similarly situated discriminatees who demonstrate that they were available to be referred out to the Port at the time the Port first used the "A" and/or "B" list employees. Thereafter, the discriminatees will have to have continued, calendar quarter by calendar quarter, to be available for work at the Port. There is one exception to the "availability" standard as discussed below.

The Commission held in Town of Fircrest, Decision 248-A (PECB, 1977), that a discriminatory dischargee has an affirmative obligation to seek other employment and to mitigate the effects of the violation against him. However, with a finding that referrals from a hiring hall have been discriminatory, the NLRB has precluded respondents from attempting to show that the discriminatees refused good faith referrals and thereby failed to mitigate the amount of backpay due. [Laborers' International Union (Hancock-Northwest), 268 NLRB 167 (1983); enforced 748 F.2d 1001 (5th Cir., 1984); den. cert. 470 US 1085 (1985).] The record is silent as to Minetti's availability after the Port began using the "A" and "B" list. The record does establish that Minetti was out of the area for a period of time prior to the period for which back pay is ordered. Even there Minetti established

that he would have stayed in the area, had he not been discriminatorily treated. Since he was not being referred, he had to seek a livelihood somewhere to earn an income, and went to California only because he had heard there were employment opportunities there. This is striking evidence of the dramatic effect that a discriminatory hiring hall referral system has on the life of an employee. The drastic impact of the discriminatory hiring hall takes this matter outside of the holding in Fircrest. In Ironworkers, Local 483 (John A. Craner), 248 NLRB 21 (1980), the NLRB denied back pay to any named or similarly situated discriminatee during periods when they would not have been available for employment absent discrimination. The Ironworkers, Local 483, standard is applicable to the case at hand, also. If Minetti repeated the pattern and was out of the area seeking work during the back pay liability period, he may still be awarded back pay for all qualifying calendar quarters. If any costs were incurred in seeking other work, those costs are to be deducted from the outside earnings before the earnings are subtracted from the back pay. Other identified discriminatees who can show similar justification for absences will be allowed a similar availability exception.

The amount of back pay owing per calendar quarter will be determined by an examination of the Port's records. The calendar quarterly average of the amount paid to all employees who worked from either the "A" or "B" Seniority List shall be the amount of back pay owing to Minetti or other similarly situated employees. The "quarterly amount paid" is the appropriate calculation to make because of the three shift guarantee given the employees on the "A" List. Once the quarterly amount is determined, Minetti and other similarly situated employees shall have the amount individually adjusted to reflect a deduction for outside earnings, if any.

The right to back pay ends if and when the complainant or similarly situated employees accepted steady employment with an employer who offered a continuing expectation of employment.

In making future hiring decisions, the Port shall place no weight on evaluations of employees made during the time period of discriminatory dispatching from the hiring hall.

Interest shall be awarded on the back pay in accordance with WAC 391-45-410(3).

There is to be no deduction from the back pay calculation of "collateral benefits" which any of the discriminatees may have received from not being referred, i.e., savings on transportation costs of going to and from the worksite, lodging at the work site or food. See in general: NLRB v. Gullett Gin Company, 340 U.S. 361 (1950) and specifically, Hancock Northwest, supra.

Medical expenses which Minetti or other discriminatees can show were incurred which would have been covered by the medical insurance in the collective bargaining agreement will be part of the back pay award. Hancock-Northwest, supra.

Compensation for Loss of Future Earnings

The victims of the illegal hiring hall were denied the chance to be considered for the new seniority positions because, as a result of the discriminatory referral system, they did not have the requisite number of hours to be invited to apply. Additionally, because of the unlawful referral system, they did not have the opportunity to have their work performance adequately observed and evaluated by the foremen and other team members selecting employees for the new seniority positions.

To eliminate the 44 new seniority positions at the Port, and to make the parties renegotiate in good faith the Revised Supplemental Agreement, as suggested by Minetti, would cause harm to innocent individuals, i.e., the employees who were chosen for the 44 positions. The traditional Woolworth remedy, under which the NLRB orders back pay from the time of the discriminatory action to the date of an offer of reinstatement, does not suffice in

this situation. In general, federal courts have looked to awards of front pay in situations where reinstatement or immediate promotion is not a feasible remedy. In a sex discrimination case, Chewning v. Scheslinger, 471 F.Supp. 767 (D.C. Cir., 1979), the court held that a female employee of the Energy Research and Development Administration, who established her entitlement to a certain position, would be eligible for front pay if there is no opening at the equivalent grade for which she was entitled or if promoting her would seriously disrupt the agency's personnel system. Both situations appear to describe the predicament the Port and Local 9 are in. Since immediate reinstatement of Minetti and other discriminatees is not appropriate, Minetti and other discriminatees are entitled to front pay until such time as they are legitimately considered and given, or rejected for, similar positions.

The award of front pay in employment settings has not been universally approved by the courts. However, the 9th Circuit has strongly approved the award of front pay in the case of EEOC v. Pacific Press Publishing Co., 482 F.Supp. 1291 (N.D. Calif., 1979). In another sex discrimination case, Fitzgerald v. Sirloin Stockade, 624 F.2d 945 (10th Cir., 1980), the court held that the plaintiff was discriminated against on the basis of her sex when the defendant failed to consider her for promotions. The court found that the plaintiff did not have the actual experience required for the job, but rejected the defendant's argument that the lack of experience was the reason for not considering her. The court concluded that the failure to consider was partially because of her sex, and that the plaintiff's effort to obtain consideration for the promotion was met with resistance similar to that she encountered in seeking to obtain other positions. In the Fitzgerald case, the plaintiff was later terminated because of her filing a complaint with the Oklahoma Human Rights Commission. The court considered and rejected a possible reinstatement order on the grounds that the environment was hostile because of the termination and other retaliatory activity following the filing of the discrimination charge. In the alternative, the court awarded front pay based on the difference between the salary of the male who was promoted at the time of the judgment, and that which the plaintiff

expected to make in her present job, until such time as she reached the place where she could recover equivalent pay and could exercise equivalent responsibility. The court determined that this would likely be five years in the future. On appeal, the Court of Appeals rejected the defendant's argument that front pay should not be awarded when the plaintiff had not requested reinstatement. The court noted that the trial court has broad authority to fashion a remedy and there is no necessity for the plaintiff to request reinstatement as a prerequisite to obtain front pay where the evidence reveals an atmosphere of hostility.

In the instant cases, each discriminatee is entitled to front pay until: 1) the discriminatee obtains seniority status with the Port (the Port must in good faith apply its probationary review to each discriminatee); or 2) the discriminatee reaches a level of employment where he or she can recover the equivalent pay as the new seniority employees are earning; or 3) five years from the date of filing of the complaint whichever is earliest. The five year standard is used based on the Fitzgerald judgment. The Commission acknowledged in Columbia School District et al., Decision 1189-A (EDUC, 1982), that any quantification is somewhat arbitrary. In Columbia as here, no party has offered a more appropriate formulation, so the standard set by the federal courts will be applied.

Liability

Since these unfair labor practices are the result of collusion, the respondents shall be jointly and severally liable. Pacific Maritime Association, supra.

The Port and Local 9 will be ordered to post notices of their violations of the PECBA. Since by definition, a casual employee does not report daily to a work station, mere posting at the respondents' locations of business is inadequate to effectuate the purposes of the Act. Therefore, each respondent will be ordered to send a copy of its respective notice to each identified employee who was on the "Red List" or the casual list, and who was not a

member of the union. The notice must be sent the same day that the individual respondent complies with this order by signing and posting the notice at the appropriate places. The notice must be sent to the last known address of the employee. Each respondent must use due diligence to find employees whose notices are returned by the postal authorities. In the same mailing, each respondent must notify the employee that he/she has 60 days, from the date the notice is signed, to establish a claim for back pay and/or front pay. The 60 day period is reflective of the length of time the Commission requires that notices in unfair labor practice cases remain posted.

Respondents' Defenses

The Port's argument here that there is no discrimination because employees who are good workers are requested back and therefore they achieve membership status is not persuasive when there is discrimination present. As the NLRB found in Ironworkers Local 483:

> Thus, with respect to those Charging Parties and any other employees similarly situated who regularly used the Local 483 or Local 11 referral systems, it is equitable to make them whole in the manner prescribed by the Board in the cited cases, even though it is possible that, absent discrimination, they might have had less work through referrals than union members by virtue of having less skills, or not being requested by contractors as often.

Respondents should be aware that they are required to have clean hands in the operation and use of hiring halls. "For as we have often noted in backpay cases, we refuse to give Respondent the benefit of uncertainties caused by its own misconduct." International Union of Operating Engineers, Local No. 370m, AFL-CIO, 224 NLRB 641 at 642 (1976).

FINDINGS OF FACT

1. The Port of Seattle is a "public employer" within the meaning of RCW 41.56.030(1). At the time in question, it was represented for purposes of collective bargaining negotiations by Larry Wheeler.

2. The International Longshoremen's and Warehousemen's Union, Local 9 (ILWU), is a "bargaining representative" within the meaning of RCW 41.56.030(3) and is the exclusive bargaining representative of a bargaining unit of warehouse employees of the Port. The business agent is John McRae.

3. The collective bargaining agreement between the parties was negotiated prior to the effective date of RCW 53.18.015 (1983). It requires a newly hired employee to join the union within 60 days of employment or be discharged. In another section, the agreement dictates that only union members can perform unit work. It does not protect an employee's right of non-association, as required by RCW 41.56.122.

4. Gene Minetti has worked from time to time as a "casual" warehouseman along the waterfront in Seattle since at least 1980. He is not a member of the ILWU.

5. To obtain seniority in the ILWU, a warehouseman must work 60 consecutive days with one employer with whom the ILWU has a collective bargaining agreement.

6. The ILWU operates a hiring hall which the Port uses to obtain warehousemen. Prior to September 1986, the ILWU maintained two separate lists of employees for dispatching: the "Book List" of Local 9 members and the "casual list" of people who are not union members. Sometime in 1985, the ILWU began placing casual employees with five or more years of experience as a warehouseman on a "Red List" to be dispatched after the "Book List", but prior to the "casual list".

7. In 1985, the Port and the ILWU negotiated a Revised Supplemental Agreement to their collective bargaining agreement. The stated purpose of the Revised Supplemental Agreement was to provide job opportunities for the union membership and to establish better business opportunities for the Port. The revision called for the Port to add 44 new seniority employees to its roster and to reduce the wage rate of casual warehousemen from a range of $14.95 through $15.25 to a flat $10.00 per hour. The Port was eager to institute a reduced, flat rate for the casual warehousemen. McRae reported to the union membership that the application qualifications for the new seniority positions would offer union members a good chance of being considered because of the "fair" hour requirement.

8. To be invited to apply to be considered for one of the new seniority positions, a warehouseman had to have worked a minimum of 160 hours for the Port within the period of July 1, 1984, through August 9, 1985. The August 9, 1985, cut-off date was chosen because it corresponded to the most recent payroll period.

9. A selection committee composed of six foremen who were members of Local 9 and various Port management personnel chose among the applicants on the basis of six factors. Length of work experience with the Port was weighted heavier than the other factors. Union membership was not a stated factor. Thirty-four union members and ten people who were not union members made the final selections for 44 newly created positions.

10. Minetti did not have the requisite 160 hours within the allotted time period. He was thus denied the opportunity to apply for a position and was not considered by the selection committee.

11. Sometime in September 1986, the ILWU entered into a settlement agreement to resolve a charge of unfair labor practice which Minetti was pursuing against the union through the National Labor Relations Board. In the

settlement, the ILWU agreed to combine its dispatch lists and no longer give union members a preference when being dispatched.

12. The time period used to establish Port experience to be selected for newly created seniority positions with the Port was a period during which the union operated a discriminatory exclusive hiring hall which encouraged union membership by dispatching its members prior to dispatching people who were not union members from its hiring hall.

13. The Port had actual knowledge or reasonably can be charged with notice of the discriminatory manner in which the union operated the hiring hall during the time in question.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over the complaints of discrimination due to lack of union membership pursuant to RCW 41.56.

2. The Public Employment Relations Commission does not have jurisdiction over the complaints of racial or sexual discrimination.

3. The complainant filed the charges of unfair labor practices in a timely fashion under RCW 41.56.160.

4. By using its discretion to agree to use the union's hiring hall, the Port has not violated RCW 53.18.060.

5. By negotiating and expressly stating in the preamble to the Revised Supplemental Agreement that the Port and Local 9 were mutually interested in obtaining jobs for "union members", the respondents unlawfully encouraged membership in the union in violation of RCW 41.56.140(1) and RCW 41.56.150(1) and (2).

6. The agreement to fill the seniority positions created by the Revised Supplemental Agreement, based on applicants' qualifications and experience, when the time period used to establish candidates' suitability was during a time when the candidates were referred to the employer in a discriminatory manner, is a violation of RCW 41.56.140(1) and RCW 41.56.150(1) and (2).

8. The complainant has not met its burden of proof to show that the Port discriminated against him in violation of RCW 41.56.140(3) because he filed unfair labor practice complaints.

9. The complainant has not met its burden of proof to show that the Port and/or Local 9 discriminated against him in violation of RCW 41.56.140-(1) by showing favor to other employees who were related to officials of the employer or the union.

10. The complainant has not met its burden of proof to show that the cut-off date of August 9, 1985, to calculate work experience with the Port, was chosen specifically to discriminate against him.

Based on sworn testimony given at the hearing, the demeanor of the witnesses, the exhibits received into evidence and the record as a whole, it is:

ORDERED

1. The complaint charging unfair labor practices against the Port of Seattle, Case No. 6214-U-86-1182, is dismissed.

2. The complaint charging unfair labor practices against the International Longshoremen's and Warehousemen's Union Local 9, Case No. 6215-U-86-1183, is dismissed.

3. The allegations in Port of Seattle, Case No. 6201-U-86-1179 charging that the Port discriminated against the complainant for filing earlier charges of unfair labor practices are dismissed.

4. To remedy the unfair labor practices violations committed by the Port of Seattle, Case No. 6201-U-86-1179, it is ordered that the Port of Seattle, its officers, elected officials, and agents, shall immediately:

A. Cease and desist from:

i. Agreeing with the respondent union to give preference to union members over people who are not union members in work assignments;

ii. Making hiring decisions based on evaluation observations of employees, and length of Port experience gained by employees, when they were dispatched from the union hiring hall in a discriminatory manner, which unlawfully encouraged union membership.

iii. Interfering with, restraining or coercing its employees in any other manner in the free exercise of their rights guaranteed them by the Act.

B. Take the following affirmative actions to remedy the unfair labor practices and effectuate the purposes and policies of Chapter 41.56 RCW:

i. In conjunction with respondent union, make whole Gene Minetti and other similarly situated employees in the manner prescribed in the section herein entitled "Remedy", by paying them back pay and front pay.

ii. Post, in conspicuous places on the employer's premises where notices to all employees are customarily posted, copies of the notice attached hereto and marked "Appendix A". Such notice shall, after being duly signed by an authorized representative of the Port of Seattle, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the Port of Seattle to ensure that said notices are not removed, altered, defaced, or covered by other material.

iii. Notify Gene Minetti, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide Gene Minetti with a signed copy of the notice required by the preceeding paragraph.

iv. Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by paragraph A. ii. of this Order.

5. To remedy the unfair labor practices committed by the International Longshoremen's and Warehousemen's Union, Local 9, Case No. 6202-U-86-1180, it is ordered that the International Longshoremen's and Warehousemen's Union, Local 9, its officers, elected officials, and agents, shall immediately:

A. Cease and desist from:

i. Agreeing with the respondent employer to give preference to union members over people who are not union members in work assignments;

ii. Assisting and/or causing the respondent employer to make hiring decisions based on evaluation observations of employees, and length of Port experience gained by employees, when they were dispatched from the union hiring hall in a discriminatory manner, which unlawfully encouraged union membership.

iii. Interfering with, restraining or coercing public employees in any other manner in the free exercise of their rights guaranteed them by the Act.

B. Take the following affirmative actions to remedy the unfair labor practices and effectuate the purposes and policies of Chapter 41.56 RCW:

i. In conjunction with respondent employer, make whole Gene Minetti and other similarly situated employees in the manner prescribed in the section herein entitled "Remedy", by paying them back pay and front pay.

ii. Post, in conspicuous places on the union's premises where notices to all public employees are customarily posted, copies of the notice attached hereto and marked "Appendix B". Such notice shall, after being duly signed by an authorized representative of the International Longshoremen's and Warehousemen's Union, Local 9, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the International Longshoremen's and Warehousemen's Union, Local 9, to ensure that said notices are not removed, altered, defaced, or covered by other material.

iii. Notify Gene Minetti, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide Gene

Minetti with a signed copy of the notice required by the preceeding paragraph.

iv. Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by paragraph B. ii. of this Order.

DATED at Olympia, Washington, this 16th day of December, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker

KATRINA I. BOEDECKER, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

"APPENDIX A"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION HAS HELD A HEARING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE. THE COMMISSION HAS FOUND THAT WE VIOLATED THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT (CHAPTER 41.56 RCW) AND HAS ORDERED US TO POST THIS NOTICE.

WE WILL NOT agree with the INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, Local 9, to give preference to union members over people who are not union members when selecting people for work.

WE WILL NOT agree with the INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, Local 9, to make hiring decisions based on observations of employees when the employees were dispatched from the union hiring hall in a discriminatory manner, which unlawfully encouraged union membership.

WE WILL NOT agree with the INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, Local 9, to make hiring decisions based on length of Port experience gained by employees when the employees were dispatched from the union hiring hall in a discriminatory manner, which unlawfully encouraged union membership.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of rights guaranteed them by the Public Employees' Collective Bargaining Act.

WE WILL, together with the INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, Local 9, pay back wages to each employee who was not a member of the union; who was not selected for the "A" or "B" seniority lists; and who was on the Red List or the Casual List on September 4, 1985, and continued to be available for work.

WE WILL, together with the INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, Local 9, pay "front pay" to each employee who was not a member of the union; who was not selected for the "A" or "B" seniority lists; and who was on the Red List or the Casual List on September 4, 1985, and continued to be available for work. WE WILL pay front pay to each employee who we discriminated against, and who continues to be available for work, until we legitimately consider him or her for a seniority warehouseman's position.

PORT OF SEATTLE

By:_____
Authorized Representative

Dated _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone (206) 754-3444.

"APPENDIX B"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION HAS HELD A HEARING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE. THE COMMISSION HAS FOUND THAT WE VIOLATED THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT (CHAPTER 41.56 RCW) AND HAS ORDERED US TO POST THIS NOTICE.

WE WILL NOT make an agreement with the PORT OF SEATTLE that gives preference to union members over people who are not union members to be selected for work.

WE WILL NOT conspire with the PORT OF SEATTLE to have hiring decisions made based on observations of employees when the employees were dispatched from the union hiring hall in a discriminatory manner, which unlawfully encouraged union membership.

WE WILL NOT conspire with the PORT OF SEATTLE to have hiring decisions made based on length of Port experience gained by employees when the employees were dispatched from the union hiring hall in a discriminatory manner, which unlawfully encouraged union membership.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of rights guaranteed them by the Public Employees' Collective Bargaining Act.

WE WILL, together with the PORT OF SEATTLE, pay back wages to each employee who was not a member of the union; who was not selected for the "A" or "B" seniority lists; and was on the Red List or the Casual List on or about September 4, 1985, and continued to be available for work.

WE WILL, together with the PORT OF SEATTLE, pay "front pay" to each employee who was not a member of the union; who was not selected for the "A" or "B" seniority lists; and who was on the Red List or the Casual List on September 4, 1985, and continued to be available for work. WE WILL pay front pay to each employee who we discriminated against, and who continues to be available for work, until we legitimately consider him or her for a seniority warehouseman's position.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

By:_____
Authorized Representative

Dated _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone (206) 754-3444.